

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.5917/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

**Abid Jawad, ASI, Photography Section, Forensic Science Laboratory,
 Khyber Pakhtunkhwa, Peshawar.**

... (Appellant)

VERSUS

1. Additional Inspector General of Police (Investigation), Khyber Pakhtunkhwa, Peshawar.
2. Director, Forensic Science Laboratory, Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mir Zaman Safi ... For appellant
 Advocate

Muhammad Jan ... For respondents
 District Attorney

 Date of Institution.....09.06.2021
 Date of Hearing.....12.09.2024
 Date of Decision.....12.09.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of appeal, the impugned notification dated

23.12.2020 to the extent of appellant may kindly be modified



thereby promoting the appellant as ASI with effect from 14.06.2018 instead of 23.12.2020 with all back benefits.”

3. Brief facts of the case are that appellant was inducted as Constable in the respondent department and was transferred to Forensic Science Laboratory Khyber Pakhtunkhwa, Peshawar in the year 2009. He was posted in Photography Section and later on, upon recommendations of the Director FSL, he was permanently transferred to FSL; that the vacancy of the Head Constable fell vacant in Photography Section on 14.01.2011, due to promotion of Head Constable Taza Gul as ASI and the appellant for his promotion as Head Constable after filing departmental appeal, he filed service appeal No.636/2016 and in the meanwhile the appellant was promoted as Head Constable vide order dated 29.06.2017, thus the service appeal of the appellant was decided however the appellant was granted permission to approach proper forum for the redressal of his grievance. Thereafter, appellant preferred departmental appeal for modification of notification dated 29.06.2017, which was not responded, whereafter the appellant filed service appeal No. 7/2017 which is still pending and the meanwhile appellant was promoted as ASI vide notification dated 23.12.2020. Appellant filed departmental appeal on 07.01.2021, which was not responded, hence the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.



4. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned orders.

6. Appellant through instant appeal seeks ante-dation of his promotion order dated 23.12.2020 to 14.06.2018, when he became eligible and a vacancy was available, which arose upon the promotion of Mr. Taza Gul, ASI. The appellant alleged that the post of ASI in the Photography Section has been vacant since 28.06.2018, and he, being the only Head Constable in the section, entitled to be promoted to the post of ASI. His promotion as Head Constable was delayed by the respondents as he was promoted vide order dated 26.06.2017, while his service appeal related to the same was pending adjudication in the Service Tribunal, bearing No. 636/2016 which became infructuous due to the issuance of a notification dated 29.07.2017, promoting the appellant as Head Constable. The appellant was promoted as an officiating Head Constable by the impugned order dated 29.07.2017. After completing the required officiating period and necessary training, he was subsequently promoted as officiating ASI vide impugned order dated 20.12.2023. Appellant seeks ante-dation of his officiating promotion as ASI, which, in fact, is not a promotion in the true sense because, as per Rule 13.18, it is dependent upon his performance and successful completion of mandatory training. The competent authority may, after the completion of this two-year period, revert



or confirm the police official to the substantive rank of Head Constable. Therefore, the impugned order is not a final or appellate order under Section 4 of the Khyber Pakhtunkhwa Tribunal Act, 1974, against which only a civil servant may file a service appeal.

7. For what has been discussed above, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.

8. *Pronounced in camp court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2024.*


(KALIM ARSHAD KHAN)
Chairman

Kaleemullah


(RASHIDA BANO)
Member (J)

ORDER

12.09.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan,
District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal
in hand is dismissed being devoid of merits. Costs shall follow the
event. Consign.

3. *Pronounced in camp court at Peshawar and given under our
hands and seal of the Tribunal on this 12th day of September, 2024.*



(KALIM ARSHAD KHAN)

Chairman



(RASHIDA BANO)

Member (J)